

### **Consolidated Delta Smelt Cases**

A FWS federal permit found that operations of the SWP and the CVP are likely to jeopardize the existence of the delta smelt and adversely modify their habitat. As a result, the FWS implemented a number of Reasonable and Prudent Alternatives, or RPAs, to minimize the jeopardy to the delta smelt.

Judge Wanger granted a motion for preliminary injunction, precluding the implementation of the RPAs. Judge Wanger concluded that the FWS violated NEPA by failing to analyze the impact to humans and the human environment. Furthermore, FWS did not use the best available scientific data in developing the RPAs in violation of the ESA.

A hearing on the summary judgment motion was held on July 8<sup>th</sup> and 9<sup>th</sup> and a decision is expected soon.

### **Consolidated Salmonid Cases**

In a similar case, a NMFS federal permit found that operations of the SWP and the CVP are likely to jeopardize the existence of salmon and adversely modify their habitat. NMFS implemented a number of RPAs to regulate project operations at certain times in order to minimize the jeopardy to the salmon.

Judge Wanger granted a motion for a preliminary injunction, precluding the implementation of the RPAs. Judge Wanger concluded that NMFS violated NEPA by failing to analyze the harms to human health and safety and the human environment. Furthermore, NMFS developed the RPAs without any reasoned and scientifically justified biological explanation for selecting specific remedies chosen.

The plaintiffs have moved for summary judgment. Oral arguments are scheduled to begin in December of this year (December 16-17, 2010).

### **State Water Contractors v. Department of Fish and Game**

DFG found that the FWS federal permit was consistent with CESA. The State Water Contractors brought suit claiming that the DFG failed to rely on the best available science in the consistency determination

The petitioners sought declaratory and injunctive relief. On July 8, 2010, the Sacramento Superior Court issued a stipulation and order to stay proceedings.

### **State Water Contractors v. Department of Fish and Game (2)**

In a similar case, DFG found that the NMFS federal permit was consistent with CESA. The State Water Contractors again brought suit claiming that the NMFS failed to rely on the best available science in the consistency determination. The Petitioners also claim that by placing limits on exports, NMFS violates the prohibition against the unreasonable use and waste of water under the California Constitution.

Petitioners sought declaratory and injunctive relief. On July 13, 2010, Sacramento Superior Court entered a stipulation and order to stay proceedings.

### **Kern County Water Agency v. Department of Fish and Game**

The Kern County Water Agency brought suit alleging that DWR is not subject to CESA because DWR is not a “person” as defined in the Fish and Game Code. Therefore, DWR is not required to get an incidental take permit prior to exercising the right to continue operations of the SWP. Petitioner further claims that the smelt consistency determination is not supported by substantial evidence.

On April 22, 2010, the Sacramento County Superior Court issued a stipulation and order to stay proceedings because the issues raised are currently being litigated in a different case.

### **Coalition for a Sustainable Delta v. McCamman**

Petitioners filed a complaint alleging that the enforcement of regulations protecting the striped bass population violates section 9 of the Endangered Species Act because the striped bass prey on other ESA-listed species.

The court recently denied the Petitioner’s summary judgment motion because a dispute exists over the causal link between striped bass abundance and increased mortality of ESA-listed species.

A mandatory settlement conference is scheduled for October 2010. If a settlement is not reached, the case will go to trial in January of 2011.

### **California Water Impact Network v. California State Water Resources Control Board**

On September 7, 2010, the California Water Impact Network, the California Sportfishing Protection Alliance, and AquAlliance filed suit in Sacramento Superior Court against the California State Water Resources Control Board and DWR.

The Plaintiffs allege that by continuing exports of Delta water despite evidence of ecosystem decline the Board and DWR have failed to protect the public trust, wastefully and unreasonably divert and store water from the Delta in violation of the California Constitution, and fail to enforce and comply with state permit and licensing conditions.

Petitioners are seeking to enjoin DWR from diverting Delta water and prevent the Board from allowing such diversions. Respondents have not yet filed an answer.